

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: WEDNESDAY, MAY 19, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

A. CALL TO ORDER

Chairperson Peter Young called the meeting of the Commission on Water Resource Management to order at 9:01 a.m.

B. ROLL CALL

The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Clayton Dela Cruz
Ms. Meredith Ching

Mr. James Frazier
Ms. Stephanie Whalen

STAFF

David Higa, Charley Ice, Roy Hardy, Dean Nakano, Lenore Nakama, Kevin Gooding, Ed Sakoda, Dean Uyeno, Faith Ching

COUNSEL

Russell Tsuji, Esq.

OTHERS

Dan Davidson, Linda Chow, Paulyne Anakalea, Dr. Jim Anthony, Randy Betsil, June Harrigan Lum, Dr. Jonathan Scheuer, Linnel Nishioka, Manabu Tagomori, Rosemary Liu, Laurence Lau, Kent Morimoto, Edsel Yamada, Paul Schwind & Kapua Sprout

All written testimonies submitted at the meetings are filed in the Commission office and are available for review by interested parties.

C. APPROVAL OF MINUTES

MOTION: (Frazier/Whalen)

To approve the minutes of the April 21, 2004 meeting as circulated.

D. ACCEPTANCE OF AGENDA

The items were taken out of order and they are shown in the order taken up by the Commission.

Ed Sakoda indicated that the staff would like to withdraw item G2, Honolulu International Country Club, Apparent Violation of a Pump Installation Permit, as they have submitted the information that staff has been looking for and asked if there are other questions from the Commission. Commission asked that this be taken up as it comes up in the agenda.

E. CORRESPONDENCE/ANNOUNCEMENTS

Ed Sakoda announced that there were two emergency authorizations that they issued for stream permits. One permit issued for Waipio Valley on the Big Island due to flooding in early March and they requested an emergency authorization to do some stream work. Another for Luana Hills Country Club, Windward Oahu, at Makawao Stream, as there is a golf path that was damaged by flooding. The emergency authorization gives permission to start work and they will come to the Commission once the project is completed and apply for an after-the-fact permit.

F. OLD BUSINESS

None

G. NEW BUSINESS

1. Request for Approval of Ms. Yvonne Y. Izu, Deputy Director for Water Resource Management

PRESENTATION OF SUBMITTAL: Chair Young

RECOMMENDATION:

That the Commission on Water Resource Management approve the appointment of Ms. Yvonne Y. Izu to the position of Deputy Director for Water Resource Management.

DISCUSSION:

Chair Young indicated that the previous Deputy Director for Water Resource Management, Mr. Ernest Lau has left the Department. He encouraged the support of the Commission to appoint Ms. Yvonne Izu to serve as Deputy Director for Water Resource Management. A number of letters of her support have been received as well as persons present to testify on her behalf in support of her appointment.

Chair Young indicated that there is good news and bad news in this situation for the Department. It is a good opportunity for the Commission. The bad news is she was the “go-to” person at the Attorney General’s office for the Department and that they will not be able to field her expertise. Chair Young encouraged everyone to support her.

Dr. Jim Anthony testified against the appointment of Ms. Izu because she does not have major experience with water issues. Dr. Anthony asked if Ms. Izu will be making a statement and if so, if it will be before or after public testimony. Chair Young indicated that he didn’t believe Ms. Izu would be making a statement. Dr. Anthony requested that the Commission defer making a decision on the nomination and asked if this job was advertised. Requested Deputy Director have a measure of independence from the Chair. Also indicated that the Commission is out of balance.

Chair Young wanted the record to reflect that the Commission has received a letter of strong support from Gilbert Coloma-Agaran, former chair of the Water Commission.

Dr. Anthony interrupted and asked that Chair Young recuse himself as Dr. Anthony indicated that it is a conflict. Chair Young asked for Counsel’s advice. Counsel, Russell Tsuji, indicated that there is no conflict unless Dr. Anthony can articulate the conflict. Dr. Anthony indicated that it was a common sense issue that if Chair Young is a referee for a particular candidate and listed on her resume as a reference, he thinks Chair Young should remove himself from making the decision of public candidacy. Chair Young yielded to the Attorney General for advice. Counsel did not see a conflict.

Chair Young continued to let the record reflect that the Commission has received a letter of strong support from Tim Johns, former chair of the Water Commission, Ernest Lau, former Deputy Director of the Water Commission and Linnel Nishioka, former Deputy Director of the Water Commission. A strong letter of support indicating that Ms. Izu is eminently qualified and recommending her highly, came from Bill Paty, former Chair of the Department of Land and Natural Resources.

Mr. Manabu Tagomori, Water Resource Management of Kamehameha Schools, formerly First Deputy Director of the Water Commission, testified that he worked with Ms. Izu before in the private sector. Mr. Tagomori indicates that Ms. Izu has strong knowledge of water and has a strong staff to rely on. He also stated that he hopes to see the staff increase so they can do more that the code requires. Mr. Tagomori recommended the Commission approve the appointment of Ms. Izu to Deputy Director of the Water Commission.

Mr. Dan Davidson, Deputy Director-Land of the DLNR testified in support of Ms. Izu. He indicated that Ms. Izu is a person of enormous intellect and integrity, and urged the Commission to confirm her appointment.

Ms. Linnel Nishioka testified that Ms. Izu is one of most qualified person for this position and will bring a wealth of knowledge in many different areas. Ms. Nishioka urged the Commission to confirm her appointment.

Mr. Edsel Yamada, former Deputy AG, has known Ms. Izu for 25 years, from law school years, working together at the Legislature and Attorney General's office. He respects her fairness and integrity and knows she will do a good job for the State in protecting its resources.

MOTION: (Dela Cruz/Whalen)
To approve as presented by staff
UNANIMOUSLY APPROVED

**2. Honolulu International Country Club, Mel's Water Works,
APPARENT VIOLATION OF A PUMP INSTALLATION PERMIT,
Honolulu International Country Club (Well No. 2154-01), TMK 1-1-
75:87, Moanalua Ground Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Lenore Nakama

AMENDED RECOMMENDATION:

Defer action to the June 16, 2004 Commission meeting.

DISCUSSION:

Staff summarized the submittal, describing administrative attempts over a six-month period, from September 2003 to February 2004, to obtain the required well completion report. Staff offered 2 alternatives for the penalty calculation. One alternative was based on the plain language in the permit, which stated a daily fine of up to \$1000 per day beginning on the date of permit approval. The second alternative was based on the current Penalty Guideline that was approved by the Commission on April 18, 2001.

Because full compliance with the permit conditions had been achieved on May 17, 2004, staff had recommended that the submittal be withdrawn from the Commission agenda, but the Commission requested to hear and discuss the submittal. The permittee and contractor were not in attendance because they had been informed that the submittal would be recommended for withdrawal; therefore, staff requested that the Commission defer action until the following Commission meeting when the parties could be present. Staff acknowledged that the withdrawal of the submittal item was a Commission decision, not the staff's. The Commission noted the amount of staff time and effort expended on enforcement and expressed concern that withdrawal of the submittal in response to compliance at such a late date would send the wrong message to the regulated community.

The Commission asked how much water was being pumped. Staff replied that the permittee's compliance with water use reporting was still under investigation. If the permittee is found to be delinquent in water use reporting, staff will pursue that as a separate enforcement action.

The Commission inquired about staff's ability to impose penalties on its own. Deputy Director Izu replied that the legislature recently passed a bill providing for administrative civil penalties. Staff is researching whether the bill applies to the Commission.

Deputy Director Izu stated that standards for enforcement actions need to be established. Staff will work on reviewing and modifying the enforcement policy.

The Commission requested that, in future enforcement submittals, if multiple companies are implicated, that they be discussed separately.

MOTION: (Whalen/Dela Cruz)

To approve to defer.

UNANIMOUSLY APPROVED TO DEFER

- 3. Koolau Cattle Company, APPLICATION FOR WELL CONSTRUCTION / PUMP INSTALLATION PERMITS**
Waihee Equestrian (Well No. 5731-06), Well Construction: 6-inch Casing Diameter, 650-ft Deep Well Pump Installation: 200 gpm for Agricultural Use TMK 3-2-3:27, 54-345, Kamehameha Hwy., Maui

PRESENTATION OF SUBMITTAL: Charley Ice

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Approve the issuance of a well construction permit for Waihee Equestrian Well (Well No. 5731-06) subject to the standard conditions in Exhibit 6. The permit shall require that the pump testing plan be approved by the Chairperson, and that Kupaa Well (Well No. 5731-03) be used as a monitor well during pump testing.
- B. Order staff to revisit designation of the Waihee Aquifer System as a water management area at the next Commission meeting.

DISCUSSION:

Mr. Charley Ice indicated that there was a correction to the submittal. The last line in the title has an incorrect TMK and should read:

TMK 3-2-1:3, 54-345, Kahekili Highway, Maui

Commissioner Ching requested a clarification from staff of their request. Is staff asking for authorization of a well construction permit as well as allowing Maui Department of Water Supply (MDWS) to remain at total pumpage of 4.0 mgd? Mr. Ice indicated that the permittee has the right to a well construction permit. In regards to the amount of pumpage, it would have to be determined by what the pump test reveals. The Commission is trying to keep the pumpage level to 4.0 mgd, south of Makamakaole Gulch.

Commissioner Ching questioned if there would be any implications to the MDWS. Mr. Roy Hardy replied by indicating that staff did not know if the pumpage level would be 4.0 or 4.5 mgd. Memorandum of Agreement (MOA) is still in the crafting stage. The Commission prefers 4.0; MDWS prefers 4.5 mgd. In the MOA, staff is not recommending 4.0 or 4.5 mgd. At present, staff is working with MDWS in creating a MOA.

Commissioner Ching asked if staff was concerned that if this well goes on line at the requested pumpage plus the 4.0 mgd at the MDWS is it the staff's concern that the aquifer will be damaged or they are not meeting the terms of the MOA that was discussed at the February meeting? Staff replied it was the latter.

Commissioner Frazier said that they did not read that there is an alternative supply. Is staff suggesting that there is a stream that could be pumped for a satisfied supply? Staff indicated that the alternatives are not very good ones the applicant may have difficulty in pumping out from the stream.

Commissioner Frazier asked if the applicant would wait until the test well was in place so determination can be made with the aquifer or is there a timing issue.

Mr. Randy Betsil, representing Koolau Cattle Company indicated that the company is not new and was formed three years ago. The previous owner had a

long-term lease with Mendes Ranch and maintain 60 – 80 horse and cattle. He also has an equestrian rodeo type operation, which is on a month-to-month lease. Has been trucking water in. Mendes has access to family water rights and they have a ¾-inch pipe that brings water into their area. Koolau has future plans with the property, but nothing has been established. Currently planning to upgrade property for leasing purposes.

Commissioner Whalen asked how they came to a determination of requesting 2.4 mgd. Mr. Betsil said he did not determine this amount. He thought that they had requested more. He has been working with a consultant to have native habitat and farming type operation.

In response to Commissioner Ching's question, Mr. Betsil indicated that he does not believe a delay would cause the company any hardship on the current plans they have made. The future plans of the 307 acres are uncertain. The initial plans are for cattle and employee housing.

Commissioner Frazier indicated that in his past experience that area was not suitable for agriculture and asked what owner's plans were. Mr. Betsil indicated they were looking into a sheet flow irrigation.

Mr. Betsil indicated that they have just met with the Natural Resources Conservation Service (NRCS) to determine the process of the application to be a "co-operator" in a land management plan. The company has had initial discussions to conduct a survey. Mr. Betsil indicated he was not part of that meeting.

In response to Chair Young's question, Mr. Hardy indicated that a well construction permit can be allowed, but may deny a pump permit. Mr. Hardy also indicated that there is no way to find out if this well construction would impact neighboring wells until the construction is complete and water is drawn.

Kapua Sproat, Esq., attorney for Earthjustice representing Maui Meadows Homelands Association in their quest to designate the Waihee Aquifer, indicated that there is fierce competition for Waihee water resources. Ms. Sproat also indicated that they strongly request the Commission to revisit the designation. Ms. Sproat also provided written testimony.

Dr. Jim Anthony asked the Commission to act on the side of caution and revisit the designation issue and asked not to make a decision.

Chair Young indicated to Mr. Betsil that their company may have the ability to drill a well, but may not be able to draw water and wanted to make sure that Mr. Betsil understood this. Mr. Betsil indicated that he is trying to.

Commissioner Whalen made it clear that there are concerns about the aquifer, in that insufficient data are available. With the understanding with new information being prepared, the Commission can make better decisions.

Mr. Betsil requested that the Commission approve the construction permit and not defer the request. Chair Young asked if this construction permit approval can be deferred for another month while staff conducts test. Mr. Betsil still requests the approval of this permit.

Chair Young indicated that if Commission approves staff recommendation, Koolau Cattle Company (KCC) will have the right to drill a well. He notified KCC that on June 16th, there will be discussions about water use permits, existing and perspective and what should the Commission do relative to the aquifer. Mr. Betsil indicated that he understood.

Commissioner Whalen indicated that the applicant fully understands the consequences whatever action the Commission takes. On the basis of this discussion, Commissioner Whalen moved to staff recommendations as amended.

MOTION: (Whalen/Frazier)

To approve as amended

UNANIMOUSLY APPROVED AS AMENDED

4. Application for a Stream Channel Alternation Permit (SCAP-MA-367) County of Maui, Department of Public Works and Environmental Management, Kahananui Bridge Replacement and Installation of Utilities (Kahana Stream, Lahaina, Maui (TMK:4-3-05 & 4-3-19))

PRESENTATION OF SUBMITTAL: Ed Sakoda

RECOMMENDATION:

That the Commission approve a stream channel alteration permit to replace Kahananui Bridge, and install utilities at Kahana Stream, Lahaina, Maui (TMK: 4-3-05 & 4-3-19). The stream channel alteration permit will be valid for two years, subject to the standard conditions in Exhibit 5.

DISCUSSION:

Mr. Ed Sakoda indicated that the county proposes to replace the existing bridge and new 8-inch waterline and 21-inch sewer line, which is expected to take 4 months. Staff has no objections to this project.

MOTION: (Ching/Dela Cruz)

To approve as submitted by staff

UNANIMOUSLY APPROVED

H. REPORTS**1. Fifth Quarterly Report (January 1 – March 31, 2004) Lalakea Alternative Mitigation Project (LAMP)**

Mr. Ed Sakoda asked that the Commission read this on their own. He also noted that Kamehameha Schools will make a presentation to the Commission sometime in July.

2. Stream Policy Working Group

Mr. Ed Sakoda indicated that back in February staff presented the Pristine Stream Policy recommendations and proposed actions to the Commission. The group recommended that 11 streams be considered and asked to take it for public input. There was a concern of the cost of this. Commission asked staff to take this back to the concerned parties. They have had five working group meetings, the last meeting on April 15th. Staff failed to include listing some of the people that attended these meetings. For the record, they are, Dr. Jim Anthony (Laieikawai), Bill Devick (DAR), Kaipo Ferris (Makawaa Stream Restoration & Alliance), Diane Ley (DOA), Bill Meyer (Consultant), Joe Prigge (Kauai Resident), John Reppun (Key Project-Waihole), Warren Suzuki (Maui Land & Pine), Marjorie Ziegler (Conservation Council for Hawaii). Total of 28 people participated in at least one of the five meetings that took place. Various issues raised concerning the validity of the pristine stream policy, and that the Commission needs to focus on setting instream flow standards. Also there were 10 issues that were raised by the working group. As a result of these meetings, we should take a step back and develop broader stream protection policies and a framework for setting instream flow standards. Next meeting is scheduled for May 27th. Rather than have a public hearing, as it becomes too costly (statewide), staff is asking if public input via an email process could be taken. Staff would meet with the working group, bring it to the Commission for approval then send out to public via email.

Commissioner Ching wanted clarification of what the end product would be. Mr. Sakoda indicated that the ultimate goal is to set up instream flow standard setting process. Hoping to come up with broader policies. Hopefully after meetings will make recommendations to the Commission. Commissioner Ching felt this was informally put together.

Commissioner Whalen wanted to know what policies staff is talking about.

Chair Young discussed looking at 376 streams and how they might be grouped into different categories starting with pristine streams. If a diversion request

comes in for a pristine stream, will it have a different set of standards or the same as any other stream? Coming up with a pristine stream policy was supposed to be a lot easier than what actually happened.

Commissioner Frazier asked if staff has learned from what has happened in Land Board matters? Commissioner Whalen indicated that staff would need to discuss that with Dan Davidson & Department of Agriculture.

I. NEXT COMMISSION MEETINGS (TENTATIVE)

1. June 16, 2004

2. July 28, 2004

J. ADJOURNMENT

Meeting was adjourned at 11:39 am.

Respectfully submitted,

Karen Stahl
Secretary

Approved as submitted:

YVONNE Y. IZU
Deputy Director-Water